

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement and Release ("Agreement") is entered into between the State of Michigan, acting through the Department of Attorney General's Health Care Fraud Division, on behalf of the Department of Community Health (collectively referred to as the "State"), and Advanced Anesthesia Associates (referred to periodically as "AAA"), and collectively referred to as the "Parties."

### II. PREAMBLE

As a preamble to this Agreement, the State alleges the following:

A. Advanced Anesthesia Associates is a Michigan corporation, located at 700 Cooper Street, Saginaw, Michigan, and is a licensed Medicaid Program provider that has provided anesthesia and related services to Medicaid patients/recipients since 1996.

B. The State alleges that from 1997 through 2001, (the "Covered Period") AAA received and accepted overpayments from the Medicaid program as the result of claims submitted by AAA either directly or through third party billing companies for which AAA was responsible (the "Covered Conduct"). The matter was brought to the attention of the government as the result of claims being submitted to the government that billed actual minutes instead of 15 minute time units. The majority of the incorrect claims were submitted in the period February 1, 1998 through May 1, 2000, when the billing company employed by AAA, and for which AAA was responsible, submitted claims that improperly and incorrectly reported actual minutes and not units of time spent on procedures by AAA. In reliance on the incorrect statements submitted by AAA during the Covered Period, the State, through the Medicaid Program, paid the claims for Medicaid benefits.

AAA took the monies it wrongfully received from the Medicaid program for its own use and did not repay, reimburse or return to the Medicaid Program the monies improperly billed, which exceeded the amount to which it was otherwise entitled to receive under the Medicaid Program. In doing so, the State contends that AAA, either directly or through its contracted billing company(s), violated the Medicaid False Claims Act, MCL 400 601, *et. seq.*

C. Advanced Anesthesia Associates denies any wrongdoing on its part alleged in Paragraph II B, and further specifically denies that it violated the Medicaid False Claims Act, MCL 400.601 *et seq.*

D. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties have reached a full and final settlement as set forth below. Execution of this Settlement Agreement and payment of moneys shall not be construed as an admission of civil or criminal wrongdoing.

### III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration, the Parties agree as follows:

A. Advanced Anesthesia Associates agrees to pay to the State of Michigan a reimbursement of \$170,000 and \$170,000 in investigatory costs.

1) Advanced Anesthesia Associates shall deliver to the Department of Attorney General a certified check, cashier's check or money order payable to the State of Michigan in the amount of \$170,000.00 on October 1, 2003, and Advanced Anesthesia Associates shall deliver to the Department of Attorney General a certified check, cashier's check, or money order payable to the State of Michigan in the amount of \$85,000.00 on April 1, 2004, and Advanced Anesthesia Associates shall deliver to the

Department of Attorney General a certified check, cashier's check or money order payable to the State of Michigan in the amount of \$85,000.00 on September 28, 2004.

B. Subject to the exceptions in Paragraph III D below, the State (on behalf of its officers, agents, agencies and departments) agrees to release Advanced Anesthesia Associates, its employees, shareholders, and physicians from any criminal, civil or administrative monetary claim the State has or may have, including claims under the Medicaid False Claims Act, MCL 400.601 *et seq* , or the common law theories of breach of contract, unjust enrichment, or fraud or any other civil statute through common law theories, for the Covered Conduct set forth in Paragraphs II B.

C. The Parties agree that, if the payment of the settlement amount is not honored at the time of presentment at the bank on which it is drawn, or is otherwise found to be unpayable, this Agreement shall be null and void.

D. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Advanced Anesthesia Associates) are all of the following:

1) Any liability to the State (or its agencies) for any conduct other than the Covered Conduct; and

2) Any claims based upon such obligations as are created by this Agreement.

E. AAA fully releases the State, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) that Advanced Anesthesia Associates asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and agents, related to the Covered Conduct and the State's investigation and prosecution thereof.

F. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

G. Advanced Anesthesia Associates expressly warrants that it has reviewed its financial situation and that it currently is solvent, and expressly warrants that it can satisfy the financial obligations under this Agreement.

H. The effective date of the Agreement shall be when the final signatory signs the Agreement.

I. In the event Advanced Anesthesia Associates commences, or a third party commences, before the obligations under this Agreement are satisfied, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of AAA's debts, or seeking to adjudicate AAA as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Advanced Anesthesia Associates, for all or any substantial part of Advanced Anesthesia Associates, AAA agrees as follows:

1) Advanced Anesthesia Associate's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. Section 547, and AAA will not argue or otherwise take the position in any such case, proceeding or action that:

(a) Defendant's obligations under this Agreement may be avoided under 11 U.S.C. Section 547;

(b) AAA was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the State of Michigan hereunder; or

(c) The mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to AAA.

2) In the event that Advanced Anesthesia Associate's obligations under this Agreement are avoided for any reason, including, but not limited to, the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State of Michigan, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Advanced Anesthesia Associates. If the State of Michigan chooses to do so, AAA agrees that:

(a) Any such claims, actions or proceedings brought by the State (including any proceedings to exclude AAA from participation in the Medicaid Program) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph, and that AAA will not argue or otherwise contend that the State's claims, actions or proceedings are subject to an automatic stay;

(b) AAA will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the State of Michigan within ten calendar days of written notification to Advanced Anesthesia Associates, that the releases under this Agreement have been rescinded pursuant to this paragraph; and

3) Advanced Anesthesia Associates acknowledges its agreement in this paragraph as provided in exchange for valuable consideration provided in this Agreement.

J. This Settlement Agreement contains the full and complete agreement between the Parties and shall not be modified in any manner except by written instrument executed by the Parties.

K. The undersigned individuals signing this Agreement on behalf of Advanced Anesthesia Associates represent and warrant that they are authorized by Advanced Anesthesia Associates to execute this Agreement. The undersigned State of Michigan signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

State of Michigan Department of Attorney General

By: Kurt E. Krause  
Kurt E. Krause, Assistant Attorney General

Date: 6/17/03

Advanced Anesthesia Associates

By: Carolyn Ayers MD President

Date: 6/16/03

By: Nicholas S. Schindler Practice Administrator

Date: 6/30/03

Devin S. Schindler  
Devin S. Schindler, Attorney for Advanced Anesthesia Associates

Date: 6/30/03